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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,149	02/08/2001	David Charles Lyons	12929.1062US01	7449
23552	7590	02/10/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			YEUNG, JAMES C	
			ART UNIT	PAPER NUMBER

3749

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/781,149

Applicant(s)

LYONS ET AL.

Examiner

James C Yeung

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,6 and 9-26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3,5,6,9,19 and 20 is/are allowed.
- 6) ☒ Claim(s) 1,2,10-18, 21,22,25 and 26 is/are rejected.
- 7) ☒ Claim(s) 23 and 24 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Claim Rejections - 35 U.S.C. § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 21-22, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atemboski (prior art of record) in view of Sinsley '725 (prior art of record).

Atemboski discloses the invention substantially as claimed. In particular, Atemboski shows in Figs. 3-10 a gas burner for a gas fireplace, comprising:

a burner panel (20) defining a top surface and a bottom surface;

a bottom burner member (26) coupled to the burner panel (20);

wherein the burner panel (20) defines at least one aperture (48) to provided gas/air mixture to the top surface of the burner panel (20); and

wherein the burner panel (20) comprises a molded ceramic-fiber material (note col. 5, lines 35-45).

However, Atemboski does not disclose the use of a compression molding method to make the burner panel.

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Sinsley '725 teaches the use of compression injection method for ceramic-fiber artificial fire logs or panels used in gas fireplaces (note col. 1, lines 55-62).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use this known compression molding method such as taught by Sinsley '725 to make the artificial burner panel of Atemboski, since one would merely be using a known method for making such structure.

3. Claims 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimek '237 (prior art of record) in view of Sinsley '725 (prior art of record).

Shimek '237 discloses the invention substantially as claimed. In particular, Shimek '237 shows in Figs. 15-18 a gas burner for a gas fireplace, comprising:

- a burner panel (14) defining a top surface and a bottom surface;

- a bottom burner member (17) coupled to the burner panel (14);

- wherein the burner panel (14) defines at least one aperture (20,48,63) to provided gas/air mixture to the top surface of the burner panel (20);

- wherein the burner panel (14) comprises a molded material (note col. 2, lines 11-19); and

- wherein the burner panel (14) comprises a bottom panel of a combustion chamber enclosure (note Figure 12)..

However, Shimek '237 does not disclose the use of a compression molding method to make the burner panel.

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Sinsley '725 teaches the use of compression injection method for ceramic-fiber artificial fire logs or panels used in gas fireplaces (note col. 1, lines 55-62).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use this known compression molding method such as taught by Sinsley '725 to make the artificial burner panel of Shimek '237, since one would merely be using a known method for making such structure.

Response to Arguments

4. Applicant's arguments filed Nov 20, 2003 have been fully considered but they are not persuasive.

1) On page 11, lines 12-18 of the instant specification, applicants admit that compression molding is a standard technique in the art.

2) Applicants have not established criticality for making the burner panel by compression molding. Furthermore, it is noted that applicants' own disclosure, on page 11, line 15, states that vacuum molding is contemplated as an alternative process for making the burner panel.

3) The present burner panel is claimed in the form of a product by process. It is well establish that in the absence of any evidence to show that the process confers unexpected properties to the final product, that product does not patentably distinguish over an otherwise same prior art product article. In the present case, no such evidence has been presented. Therefore, no patentable weight is afforded to the apparatus claims on the basis of the method

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used to make the burner panel. The Lyon's Declaration does not present any such evidence.

Further, it appears from the applicants' disclosure on page 17 that compression molding slurries containing ceramic fibers are commercially available.

5. Claims 23-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for response to this final action is set to expire **THREE MONTHS** from the date of this action. In the event a first response is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than **SIX MONTHS** from the date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Yeung whose telephone number is (703) 308-1047. The facsimile telephone number for this Art Unit is (703) 872-9306.


James C. Yeung
Primary Examiner

JY
February 5, 2004